Equality and Human Rights Commission

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Minutes of the extraordinary meeting of the Board of the EHRC

3 March 2023 (14:00 to 15:10)
Virtual

Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman), Alasdair Henderson (Deputy Chair), Eryl Besse (Deputy Chair), Arif Ahmed, Jess Butcher, Joanne Cash, David Goodhart, Kunle Olulode, Akua Reindorf, Su-Mei Thompson, Dr Lesley Sawers, Helen Mahy.

Officers
Marcial Boo, Chief Executive Officer and Commissioner ex officio
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Jacqueline Killeen, Chief Regulator
Britta Rinaldi, Chief of Staff
Sarah Whelan, Principal, Corporate Governance

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1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees.

2. Declarations of interest

2.1 The Chairwoman invited new declarations of interest or existing interests in relation to this meeting.

2.2 The Chairwoman reminded Commissioners of her existing, declared interest.

2.3 No other declarations of interest were made.

3. Minutes of the 109th Board meeting (EHRC 20230303-01)

3.1 The Board were advised that feedback had been received from some Commissioners on the draft minutes of the 18 January Board meeting in relation to the discussion on the implications of Equality Act 2010 reform. The Chairwoman agreed that the draft paragraph pertaining to the Equality Act was not accurate and that a new version would be prepared for approval at the Board meeting on 30 March 2023. If Commissioners had further comments on the current version, they should indicate this to the Chairwoman or Chief Executive Officer by Friday 10 March.

Action: Governance team to circulate the amended minute when agreed by the Chairwoman.

4. Writing to the UK Government on the Equality Act 2010 (EHRC 20230303-02)

4.1 The Board noted the approach recommended in the paper in relation to providing Government with the Commission's views on the definition of 'sex' in the Equality Act.

4.2 In discussing the paper, the following observations were made:

a) The comments provided by Commissioners to the Executive following from the previous legal advice discussed at the 18 January Board meeting should be distributed to the rest of the Board as had been agreed at that meeting due to time constraints; and
b) the Commission should take confidence from the generally positive reception that the Commission had received on its previous guidance on separate and single-sex services and its position on Gender Recognition Act reform.

4.3 The Executive informed the Board of the Commission's plans to review the guidance for separate and single-sex service providers. Initial feedback from stakeholders is that, whilst some groups and sectors have embraced the

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guidance, others say that they want to be more ‘trans inclusive’ and are not utilising it.

4.4 The Chairwoman agreed with the Executive that it would be important for the Commission to meet its obligations under the Public Sector Equality Duty.

4.5 The Board noted the formal advice received from the Scotland and Wales Committees following their meetings on 28 February, and the Audit and Risk Assurance Committee (ARAC) following its meeting on 01 March. Commissioners raised concerns about the advice from the Committees, possibly because the Committees had been provided with incomplete advice and insufficient background of previous Board discussions to assist their discussions.

4.6 The Executive advised that appropriate governance processes had been followed and that the legal advice in the Committees’ papers had been accurate and informed by advice from external counsel albeit that papers had been sent under delay and unsighted by the Chairwoman.

4.7 The Chairwoman proposed that she write to the Chair of each Committee setting out why the Board was not able to accept their advice and why the Board had reached the conclusions it had. Commissioners agreed this approach.

4.8 The Board then discussed the recommended response from the Commission to the 21 February 2023 letter from the Minister for Women and Equalities. A small group of Commissioners considered that the draft letter was an acceptable starting point, subject to some amendments. However, following discussion, a majority of Commissioners favoured a substantially revised letter to be agreed at the next Board meeting.

4.9 The Board agreed that it was not its role to provide legal advice to Government but rather, it would summarise the relevant areas of the law engaged in its opinion as part of its response.

4.10 The Chairwoman proposed setting up two subgroups of Commissioners to work with the Executive to achieve this, one on the legal and policy issues arising, to advise on the draft letter itself, and one on media, communications and stakeholder issues resulting from our engagement with the Equality Act and our advice to the Government. The Chairwoman advised that she would write to Commissioners to set out the subgroups’ remits and activities, and ask for volunteers to form the subgroups.

Action: Chairwoman to write to Commissioners to set out the remit and activities for the subgroups of Commissioners on Legal and Policy and on Media, Communications and Stakeholder handling.

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Action: Chairwoman to write to the Chairs of the Scotland, Wales and Audit Risk and Assurance Committees to set out the Board's response to the advice received from each Committee on this matter.

5. AOB

5.1 The proposed programme for the 16 May Board meeting in Glasgow was not discussed due to lack of time. No other points of AOB were raised.

Action: Governance team to contact Commissioners by correspondence for feedback on the proposed programme for the 16 May Board meeting in Glasgow.

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